

REMARKS

The above-referenced application has been reviewed in light of the Final Office Action dated October 1, 2007. Claims 12-17, 19-21, 23-25, and 32-36 are currently pending, claims 1-11 and 18-22 having been previously cancelled. By the present Amendment, the applicant has cancelled claims 26-31, amended claims 12, 17, 19 and 21, and added claims 32-36 for consideration. It is respectfully submitted that these amendments and new claims introduce no new subject matter, are fully supported by the application, and are allowable over the references of record. Prompt and favorable consideration and allowance of these claims are earnestly solicited.

In the Final Office Action, the Examiner withdrew claims 26-31 from consideration, asserting that these claims are directed to an invention that is independent or distinct from the invention originally claimed. By the present Amendment, the applicant has cancelled claims 26-31, without prejudice. The applicant expressly reserves the right to present the subject matter of claims 26-31 in one or more divisional or continuation applications.

Claims 12-17, 19-21, and 23-25 were rejected under 35 U.S.C. § 112, first paragraph, for failure to comply with the written description requirement. In particular, it was alleged that there is no basis in the original disclosure for the recitation of a “rigid” elongate tubular member. In the interests of further prosecution, and without acquiescing to the assertions of the Final Office Action, the applicant has amended independent claims 12 and 19 such that they no longer recite a “rigid” elongate tubular member. Accordingly, since claims 12-17, 19-21, and 23-25 do not recite a “rigid” elongate tubular member, the applicant respectfully requests withdrawal of the rejection of claims 12-17, 19-21, and 23-25 under 35 U.S.C. § 112, first paragraph.

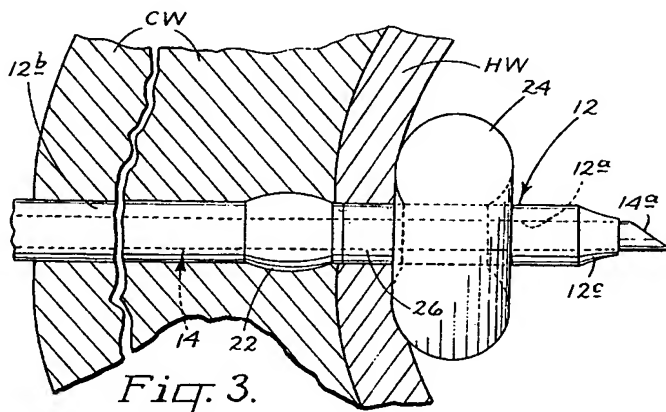
Claims 12-17, 19-21, and 23-25 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. In particular, it was asserted that the elongate tubular member is disclosed as a “flexible” member, but claimed as a “rigid” member in claims 12-17, 19-21, and 23-25, thereby rendering these claims confusing and inaccurate. As previously stated, independent claims 12 and 19, from which claims 13-17, 20-21, and 23-25 depend, have been amended and no longer recite a “rigid” elongate tubular member. Accordingly, the applicant respectfully requests withdrawal of the rejection of claims 12-17, 19-21, and 23-25 under 35 U.S.C. § 112, second paragraph.

Claims 12-17 and 23-25 were rejected under 35 U.S.C. § 102(b) as anticipated by, or in the alternative, under 35 U.S.C. § 103(a) as obvious over U.S. Patent No. 3,952,742 to Taylor (hereinafter “Taylor”). The applicant respectfully submits, however, that Taylor fails to disclose or suggest each and every element of the surgical device and method recited in amended independent claims 12 and 19, respectively.

As amended, independent claim 12 recites a surgical device including an elongate tubular member and a plurality of wall segments disposed on said tubular member each “having an uninflated state and an inflated state, wherein the plurality of wall segments includes at least two wall segments in an abutting relationship when in the uninflated state.”

As amended, independent claim 19 recites a method of positioning a surgical access device through tissue of a patient including, *inter alia*, the step of inserting the surgical access device through tissue, wherein the surgical access device includes an elongate tubular member and “a plurality of wall segments disposed on said tubular member, each wall segment having an uninflated state and an inflated state, wherein the plurality of wall segments includes at least two wall segments in an abutting relationship when in the uninflated state.”

Taylor relates to a cardiac resuscitation instrument including a tube 12 having a central portion 12b with a pair of inflatable balloons 22, 24 mounted thereon, (*see* col. 2, lines 51-54), which were characterized in the Final Office Action as the wall segments recited in independent claims 12 and 19. As seen in FIG. 3 below, prior to inflation, the “wall segments” 22, 24 of Taylor are not in contact with each other, defining a space therebetween that is configured to accommodate a band 26. (*See* col. 3, lines 1-4) (Emphasis added). The balloons 22, 24 of Taylor are axially spaced apart such that body tissue can be received therebetween for supporting Taylor’s instrument in a patient’s heart. (*See id.* at lines 62-66). Positioning the balloons 22, 24 in an abutting relationship would render Taylor’s instrument unsuitable for its intended purpose.



In contrast, amended claims 12 and 19 recite, *inter alia*, “at least two wall segments in an abutting relationship when in the uninflated state.” (Emphasis added). As shown in FIG. 35 below, wall segments 214, 216, 218, and 220 are disposed about a cannula 210 such that they are in contact with each other prior to inflation, i.e., wall segment 214 is in contact with wall segment 216, which is in contact with wall segment 218, which is in contact with wall segment 220.

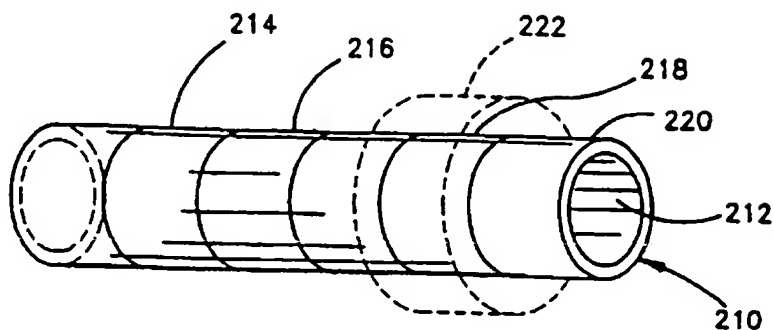


Fig.35

For at least this reason, the applicant respectfully submits that Taylor fails to disclose or suggest each and every element of the device and method recited in amended independent claims 12 and 19, respectively, and therefore, that claims 12 and 19 are allowable. Given the dependency of claims 13-17, 20-21, and 23-25 either directly or indirectly from claims 12 and 19, for at least the reasons discussed above with respect to claims 12 and 19, the applicant respectfully submits that claims 13-17, 20-21, and 23-25 are also allowable.

Claim 15 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Taylor in view of U.S. Patent No. 4,022,216 to Stevens (hereinafter "Stevens"). It was asserted that Stevens teaches that it is desirable to make the uninflated balloon 32 of a balloon catheter lie flat within a recess to be flush with the outer surface of the support member.


As discussed above, Taylor fails to disclose or suggest a surgical device that includes "at least two wall segments in an abutting relationship when in the uninflated state" as recited in amended independent claim 12. Incorporating the features purportedly disclosed in Stevens fails to cure this deficiency. Accordingly, the applicant respectfully submits that amended independent claim 12 is allowable over the combination of Taylor and Stevens. As claim 15 depends directly from claim 12, the applicant respectfully submits that claim 15 is also allowable.

The applicant has added claims 32-36 for consideration. Claims 32-33 depend either directly or indirectly from independent claim 12, which is allowable for at least the reasons set forth above. Accordingly, the applicant respectfully submits that new claims 32-33 are also allowable. Independent claim 34 recites a surgical device including, *inter alia*, a plurality of wall segments “wherein the plurality of wall segments includes at least two wall segments in an abutting relationship” which, as discussed above, is not disclosed or suggested by the references of record, either alone or in any combination thereof. Accordingly, and for at least this reason, the applicant respectfully submits that independent claim 34 is allowable. As claims 35-36 depend either directly or indirectly from independent claim 34, for at least the reasons discussed with respect to claim 34, the applicant respectfully submits that claims 35-36 are also allowable.

Appl. No. 10/820,180
Amendment dated December 14, 2007
Reply to Office Action dated October 1, 2007

In view of the foregoing amendments and remarks, the applicant respectfully submits that all claims pending in the application, namely claims 12-17, 19-21, 23-25, and 32-36, are in condition for allowance. Should the Examiner desire a telephonic interview to resolve any outstanding matters, the Examiner is sincerely invited to contact the undersigned at (631) 501-5713.

Respectfully submitted,


Dana A. Brussel
Reg. No. 45,717
Attorney for Applicant

Carter, DeLuca, Farrell & Schmidt, LLP
445 Broad Hollow Road - Suite 225
Melville, New York 11747
Tel.: (631) 501-5713
Fax: (631) 501-3526

Send correspondence to:
Chief Patent Counsel
Covidien
60 Middletown Road
North Haven, Connecticut 06473